

**DEPARTMENT OF STATE REVENUE**

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**FIRST SUPPLEMENTAL LETTER OF FINDINGS NUMBER 92-0918**

**Gross Income Tax**

**For The Period: 1987 Through 1989**

**NOTICE:** Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUE**

**I. Gross Income Tax - Reinsurance Transactions**

**Authority:** IC 6-2.1-1-2; IC 6-2.1-1-6; 45 IAC 1.1-1-14(a).

The taxpayer protests the treatment of certain reinsurance transactions.

**STATEMENT OF FACTS**

The taxpayer was incorporated under the laws of Indiana on January 5, 1968. The taxpayer files consolidated income tax returns with various affiliates. The consolidated group includes both insurance and non-insurance companies.

**I. Gross Income Tax - Reinsurance Transactions**

**DISCUSSION**

The taxpayer protests the treatment of certain reinsurance transactions. This issue involves four categories of reinsurance transactions whereby a reinsurer indemnifies other insurance companies for the risks of insurance written by such other companies. In return for the reinsurer's agreement to undertake such risks, the company that originally wrote the policies agrees to pay to the reinsurer all or a portion of the gross premiums received from its policyholders. In such agreements, the gross premiums paid to the reinsurer are often offset by an allowance for expenses incurred by the ceding company in connection with such policies such as agent commissions, state premium taxes, etc. In these transactions, the reinsurer is providing a service to the ceding company and the expense allowance operates as an adjustment to the price paid for the service.

The taxpayer states that the ceding company is not in receipt of gross income as a result of a purchase price reduction. The taxpayer argues that the expense allowance granted to the ceding company is an adjustment to the purchase price and does not constitute gross income to the ceding company. The taxpayer contends that their position is further supported by the fact that the ceding company does not perform any particular service for the reinsurer that entitles it to the expense allowance. The ceding company according to the taxpayer is the purchaser of the services from the reinsurer and not a provider of services to the reinsurer.

The taxpayer also states that IC 6-2.1-4-6 provides a deduction equal to the total amount of gross income received during the taxable year from transactions between members of an affiliated group.

The term gross income means all the gross receipts a taxpayer receives. IC 6-2.1-1-2. In the case of a domestic insurance carrier, gross income means the gross earnings derived from premiums, interest, rents, and dividends, etc. IC 6-2.1-1-6. However, gross income does not include an amount retained by the ceding company from premiums ceded under contracts for reinsurance when such amount is already included in gross income tax. Likewise, proposed regulation 45 IAC 1.1-1-14(a) defines the "gross income of an insurance carrier" as "the total amount of premiums, interest, dividends, commissions, rents, and other earnings with respect to conducting the business of an insurance company." This proposed regulation specifically excerpts from the above definition: "An amount retained by the taxpayer from premiums ceded under contracts for reinsurance when such amount is already included in gross income."

**FINDING**

The taxpayer's protest is sustained to the extent that such amounts were already included in gross income.